

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL  
COMMISSION MINUTES  
JUNE 11, 2004**

The following narrative and summary highlights actions taken by the North Carolina Alcoholic Beverage Control Commission at its regular meeting on June 11, 2004. The meeting was tape-recorded and the tape is on file at the ABC Commission/Legal Division.

**ROLL CALL**

Chairman Douglas A. Fox was present for the meeting, along with Commissioner Ricky Wright. Commissioner Mike Joyner was not present.

**MINUTES OF MAY 14, 2004 MEETING**

The Chairman asked Commission Member Wright if he had any corrections or additions regarding the Commission minutes from the May 14, 2004, meeting. Commissioner Wright had no corrections or additions. The Chairman made a motion to approve and waive the reading of the minutes into the record. Seconded by Commissioner Wright. So Ordered.

**EXECUTIVE ORDER REGARDING CONFLICTS OF INTEREST**

As required by Executive Order Number One, the Chairman asked Commissioner Wright if there were any known conflicts of interest or any conditions or facts that might create the appearance of a conflict of interest with respect to any matters on the Agenda. Commissioner Wright stated that he had no conflict of interest. The Chairman recused himself from case #8, Delia's Mini Mart and case #12, Kim's Food Mart.

Chief Deputy Counsel Fred A. Gregory stated that the following cases were to be continued: case #16, New Dixie Mart 13, #61, Billy's Seafood and case #62, T J's Gas and Grill.

**I. HEARING CASES - 62**

The Chairman made a motion to ratify the offers in compromises. Seconded by Commissioner Wright. So Ordered.

The Chairman stated that he had reviewed the first offense cases as per the resolution and made a motion to adopt the orders as signed. Seconded by Commissioner Wright. So Ordered.

**II.** The following is a list of first offense violation cases, in which Orders were signed by the Chairman on June 11, 2004 pursuant to the Commission's authorizing resolution dated November 8, 2002:

5 Star Food Mart – 103 West Third Street, Pembroke, NC 28372  
Allen's Four Seasons Exxon – 3028 High Point Road, Greensboro, NC 27403  
American Legion Post 17 – 700 New Bern Street, Wilson, NC 27893  
Bi Lo 200 – 5336 Prosperity Church Road, Charlotte, NC 28269  
Bi Lo 230 – 7323 Independence Boulevard, Charlotte, NC 28212  
Big Daddy Wesley's – 317 Cedar Street, Beaufort, NC 28516  
Eckerd Drugs 1120 – 101 East Fleming Drive, Morganton, NC 28655  
Eckerd Drugs 3159 – 6930 Market Street, Wilmington, NC 28405  
Food Lion 1078 – 2208 North Church Street, Burlington, NC 27217  
Fuel Mate Express 1 – 1516 East 11<sup>th</sup> Street, Hwy 64 East, Siler City, NC 27344  
Gate Service Station 401 – 823 North Green Street, Morganton, NC 28655  
Giorgio's Restaurant – 5226 South College Road, Unit 16, Wilmington, NC 28412  
Grocery Door 4 – 5030 US Highway 264 West, Wilson, NC 27893  
Han Dee Hugos 54 – 2744 Capital Boulevard, Raleigh, NC 27611  
Ingles 82 – 60 Ashemont Drive, West Jefferson, NC 28694  
Kinston Food Mart – 611 East New Bern Highway, Kinston, NC 28501  
Pantry 851 – 1110 Huffman Mill Road, Burlington, NC 27216  
Pantry 3147 – 980 US 1 North and Wiregrass Road, Rockingham, NC 28379  
Payless Discount Beverage Center – 10 Stockton Road, Weaverville, NC 28787  
Pizza Hut – 907 Linden Avenue, Oxford, NC 27565  
Pop Shoppe 183 – 3700 Spring Garden Road, Greensboro, NC 27407  
Rum Runners – 208 East Martin Street, Raleigh, NC 27601  
Sam's Mart 32 – 5721 Independence Boulevard, Charlotte, NC 28212  
Shokudo Japanese Seafood and Steakhouse – 30 Ashemont Drive, West Jefferson, NC 28694  
Smart Shop 5 – 400 East Grover Street, Shelby, NC 28150  
Sonny's Mini Mart – 386 South McKinley Street, Coats, NC 27521  
Star Mart 231 – 2938 Capital Boulevard, Raleigh, NC 27610  
Trade Mart 48 – 2131 Forest Hills Road, Wilson, NC 27893  
Trade Mart 66 – Hwy 70 Business and Hwy 903, La Grange, NC 28551  
Trade Mart 97 – 415 South Main Street, Rolesville, NC 27571  
Triton Quick Mart – 205 Jackson Boulevard, Erwin, NC 28339  
Wal-Mart Supercenter 1036 – 197 Plaza Drive, Forest City, NC 28043  
Wilder Grocery – 310 North Main Street, Mount Gilead, NC 27306

#### **IV. ABC STORE LOCATION – CITY OF MOUNT HOLLY ABC BOARD**

Administrator Michael Herring presented information regarding the proposed store location in the City of Mount Holly. ALE Agent Michael Yates conducted the investigation and found that the City of Mount Holly would like to locate a new self-service store in the 200 Block of NC Highway 273. Maya Lodging, a domestic Limited Liability Company, owns the proposed location. No financial conflict exists between the property owner and members of the City of Mount Holly ABC Board and members of Mount Holly City Council. The nearest church, Message of Love Church is .2 of a mile west and the nearest schools, Catawba Heights Elementary School is 1.0 mile south and Gaston Christian School is 1.1 mile south of from the proposed location. Pursuant to ABC Commission Rules, the 30-day Notice of Intent to open an ABC store was posted. The ABC Commission has not received any objections. Approximately 50 phone calls were made to City of Mount Holly. Kemp Michael, Mt. Holly City Attorney stated that most of the complaints came from church members objecting to the proposed ABC site. The Chairman asked how big was Mount Holly. Mr. Michael stated about the population was about 10,000. Mr. Herring recommended that the Commission approve the request. The Chairman made a motion to approve the store location. Seconded by Commissioner Wright. So Ordered.

**GREENSBORO ABC BOARD** - Administrator Michael Herring stated that this item was not on the agenda, but was continued from the May Commission Meeting. Mr. Herring gave some background information regarding the request for a store approval located in Greensboro. ALE Assistant Supervisor Alan Fields conducted an investigation and found that the Greensboro ABC Board plans to lease property located off Highway 68 near Interstate 40, in the city of Greensboro. The board plans to operate a modern self-service store. The square footage is 3,324. The term of the lease is 5 years. The yearly rental is \$46,536.00. Timothy D. Terrell presently owns the property. The proposed location is properly zone for an ABC store. No financial conflict of interest exists between the property owner and the Greensboro ABC Board members. The nearest church is 2 ½ miles and the nearest school is 3 miles from the proposed location. Pursuant to ABC Commission Rules, the 30-day Notice of Intent to open an ABC store was posted. Mr. Herring went on to state that there were representatives from Greensboro, High Point and Forsyth that would like to address the Commission. Jeff Gray, attorney for Greensboro ABC Board, was present to speak on behalf of his clients.

Mr. Gray presented information to the Commission. Mr. Gray stated that he had with him today Barney Brown, Chairman of Greensboro ABC Board, Owen Lewis, Vice Chairman of Greensboro ABC Board and Katie Alley, General Manager. Mr. Gray went on to state that he felt that this was a question of law and fact. As to the question of law, Forsyth ABC and High Point ABC were not in a position to protest this proposed location. Mr. Gray stated that it was his view that this matter was not properly before this Commission. There was no protest to the local board and Administrative Rule 2R.1202 is very clear in that before the Commission can consider objections, there has to be objections to the local board. He went on to state that this matter was on the May 14, 2004 Agenda and was continued because High Point ABC and Forsyth ABC stated in a letter that they didn't know about the proposed location. Mr. Gray stated that there is no

provision in the ABC Commission's rules or statutes that require any special notice to anyone greater than the notice that anyone else gets. The site was properly posted as per the requirements. Mr. Gray further argued that the protested petition be dismissed by both of the parties, so noted by the Chairman. Mr. Gray proceeded with his next argument and provided the Commission with some of his background and his knowledge on this matter. He stated that whether the other parties' argument would be that these stores would cause the system to be less sufficient or possibly take business from their store is not a proper consideration for the Commission. Mr. Gray went on to state that the standard of this Commission is in reviewing the health, safety and welfare of the community at large in deciding whether to approve this store. As of right now this proposed location has been approved by every standard that this Commission has ever applied and every standard that the Commission has the authority to apply. Mr. Gray respectfully argued that the Commission could not disapprove this location without a statutory change. Mr. Gray stated that as a matter of law the Commission could not hear the protest from other ABC Boards. The Chairman stated that it would be noted, but everybody should have his or her day in court. Mr. Gray pointed out the site on a map and the surrounding areas. He said that if the Commission ruled in favor of not allowing Greensboro ABC to use this proposed site and then allowed High Point ABC to put a store anywhere in that area it would be fundamentally unfair. High Point ABC has created a saturation of stores because they have put a store in close proximity of stores located in Greensboro and Greensboro ABC did not object. This store caused a loss of about \$1,000,000.00 and Greensboro has slowly built it back up. Mr. Gray further stated that it was about time and convenience, not about close proximity of the stores. Mr. Gray stated that the Mayor of Greensboro supports this proposed site and his letter of support is included in the information that he provided to the Commission. Mr. Gray renewed his argument that the Commission's statutory authority is limited to the health, safety and welfare of the community.

The Chairman thanked Mr. Gray for his presentation and told him that what was done in the past was in the past and not on this Board's watch. He went on to state that in the 100 days since he has been Chairman, his goal was to promote profitability and efficiency. Those are the things he looks at and he can only speak for himself and not the other Commission members. The Chairman further stated that Mr. Gray mentioned the health, safety and general welfare of the community and he asked Mr. Gray what was his definition of community. Mr. Gray stated that he felt that the community in this instance was anyone who was on the commuting pattern and anyone who passes by on Highway 68 or Interstate 40. The Chairman asked Katie Alley, if this store was going to be a LDB outlet. She stated that it was going to be an LDB outlet.

Mr. Herring stated that members of the High Point ABC Board also wanted to address the Commission. Mr. Gilbert Gates, attorney and member of the ABC Board, stated that the statute doesn't say that the Commission must consider these factors in making their decision and only these factors. He stated that the Commission's consideration of the language in the statute is permissive but it's not exclusive and the Commission may clearly consider whatever factors it thinks is appropriate. Mr. Gates stated that the Commission is the body that can consider these issues. Therefore it is very important

that the Commission consider the effect of a proposed store on nearby stores that are operated by adjoining systems. It's appropriate and important for the Commission to consider how many stores can be permitted to operate in an area without adversely impacting the overall profitability of the system. Mr. Gates went on to state that this proposed location is 1,000 feet from the High Point city limit line.

Mr. George Humble, General Manager of the High Point ABC Board, pointed out the proposed location on their blow up map. He stated that there are no grocery stores surrounding this proposed location. Mr. Humble stated that people don't usually buy alcohol during working hours; they usually buy it when they are home or on the way home. The majority of the alcohol sales are in the evenings and on the weekends. He further stated that the rule of thumb is that in order for a business to just break even, it must bring in approximately \$60,000 a month and not having any residential areas near the proposed location makes it very doubtful that it would be able to make that much. Mr. Humble stated that the 30-day notice wasn't properly posted on the outside of the window; it was posted inside of the window.

Mr. Charles McNeil, member of the High Point ABC Board, stated that there are important reasons why approval of the proposed location would be inconsistent with good policy and the objectives of the State ABC System. The following reasons are:

- 1.) ABC Stores don't compete on price.*
- 2.) If there are too many stores, then the overall profitability and efficiency of each of the adjoining systems can be adversely affected.*
- 3.) If the Commission approves this proposed location, then this would probably be used as evidence to support privatization.*

Mr. Jim Waddell is the General Manager of the Forsyth Municipal ABC Board and member of the Efficiency Committee. Mr. Waddell stated that the Efficiency Committee was started by the North Carolina ABC Boards to look at the general operation of the ABC Boards and to help stores that are not profitable. He went on to state that having stores 1.2 miles apart couldn't be efficient and profitable. He further stated that the Commission must look at what's best for the system.

Mr. Jeff Gray stated that this proposed location was the only open viable space, if they could have found another viable space, then they would consider moving it. He further stated that there are a number of hotels in the area that don't have mixed beverage permits.

Commission Wright stated that he wasn't ready to make a decision today and he wanted to review some of the information presented today. The Chairman stated that Commissioner Joyner wasn't present and we wanted to get his opinion on the matter. The Chairman made a motion to continue this to the next Commission Meeting. Seconded by Commissioner Wright. So Ordered.

### **III. ABC STORE LOCATION – CITY OF CONCORD**

Administrator Michael Herring presented information regarding the proposed store location in the City of Concord. ALE Agent J. Richard Griffin conducted the investigation and found that the proposed location would be at the Northlite Commons II Shopping Center. The address is 2212 Roxie Street, Concord, North Carolina. The property is currently owned by Northlite Realty Partners, LLC. No financial conflict exists. The nearest church is .08 of a mile and the nearest school 1.9 miles from the proposed location. Pursuant to ABC Commission Rules, the 30-day Notice of Intent to open an ABC store was posted. The ABC Commission has not received any objections. Mr. Herring recommended that the Commission approve the request. The Chairman made a motion to approve the store location. Seconded by Commissioner Wright. So Ordered.

### **V. ABC STORE LOCATION – ONSLOW ABC BOARD**

Administrator Michael Herring presented information regarding the proposed store location in Onslow County. ALE Agent Ted Carlton conducted the investigation and found that the proposed location is located at Highway 210 and Sugar Lane in Sneads Ferry, North Carolina. Louis D. Shepard currently owns the location. No financial conflict exists. The purchase price is \$325,000.00. The nearest church is 1 mile and the nearest school is 1.5 miles from the proposed location. Pursuant to ABC Commission Rules, the 30-day Notice of Intent to open an ABC store was posted. The ABC Commission has not received any objections. Mr. Herring recommended that the Commission approve the request. The Chairman made a motion to approve the store location. Seconded by Commissioner Wright. So Ordered.

### **VI. OTHER BUSINESS**

The Chairman set new Commission dates. The following dates are as follows: September 17, 2004, October 8, 2004, November 12, 2004 and December 10, 2004.

With no further business, the meeting adjourned.

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Douglas A. Fox  
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by

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Tiffany C. Goodson, Legal Division